

STATE OF MICHIGAN
COURT OF APPEALS

PASIONEK CO-PARTNERSHIP,

Plaintiff-Appellee,

v

BACHELLER ACQUISITION COMPANY and
ORLIN DEAN BACHELLER, JR.,

Defendants-Appellants.

UNPUBLISHED
February 25, 2003

No. 238347
Alcona Circuit Court
LC No. 00-010444-CZ

Before: Kelly, P.J. and White and Hoekstra, JJ.

PER CURIAM.

In this property dispute, defendants appeal as of right the trial court's order granting summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

The facts of this case are somewhat convoluted due to the lengthy time frame involved and the fact that the property has been the subject of several disputes. The disputed property is a 400-foot by 2,474-foot parcel situated between property owned by plaintiff and defendants. This parcel was the subject of an earlier dispute between then neighbors Alex C. Simo, Nettie Bissonette and Emma Bissonette. In 1954, the Alcona Circuit Court declared the property boundaries in favor of Simo who did not record the judgment.

In 1956, plaintiff's predecessors in interest, Max Pasionek and Luran Pasionek, purchased the property. For the purposes of the motion for summary disposition, the parties stipulated that the Pasioneks were, in fact, bona fide purchasers of the property from the Bissonettes. See MCL 565.29. Thus, at the time of the transfer, plaintiff's predecessors in interest did not have knowledge of the judgment transferring a portion of the property to Simo. The Pasioneks recorded their interest at the time of purchase. In 1977 or 1978, Simo sold the disputed property, apparently in addition to his own property, to James Brefka. The judgment was finally recorded on January 20, 1978. In 1986, the Pasioneks sold their property to plaintiff. In 2000, Brefka sold his property to defendants.

Defendants apparently entered the disputed parcel in preparation to harvest trees. After plaintiff brought suit to enjoin their entry and to recover damages for trespass and obtained a temporary restraining order, defendants asserted that they held record title to the disputed parcel. Plaintiff subsequently filed a motion for summary disposition, claiming that it was the bona fide purchaser of the land and maintaining that the judgment was therefore not enforceable. Defendants argued that, because plaintiff had knowledge of the judgment prior to the 1986 transfer, plaintiff could not claim to be a bona fide purchaser entitled to protection under MCL 565.29 and claimed that plaintiff's actions should be dismissed. Following oral arguments, the trial court found that plaintiff succeeded to its predecessor's status as a bona fide purchaser and held that plaintiff's actual notice of the judgment at the time of transfer was irrelevant. The subsequent order enjoined defendants from entering the property and awarded costs to plaintiff.

II. Analysis

Defendants first challenge the trial court's finding that plaintiff succeeded to the status of their predecessor in interest. We disagree.

Pursuant to MCL 565.29:

Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded. The fact that such first recorded conveyance is in the form or contains the terms of a deed of quit-claim and release shall not affect the question of good faith of such subsequent purchaser, or be of itself notice to him of any unrecorded conveyance of the same real estate or any part thereof.

Thus, under Michigan law, where an individual fails to record lien or interest in property, that interest is void as against any subsequent interest holder who purchased interest in good faith for valuable consideration. See *First of America Bank-West Michigan v Alt*, 848 F Supp 1343, 1347 (WD Mich 1993). A person takes in "good faith" if he or she takes without notice of prior unrelated interest. *Id.*; *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). This is also known as a "race-notice" statute: the first interest holder to record takes priority, unless that individual has notice of a prior unrecorded interest.

By stipulation, defendants concede that the Pasioneks were good faith purchasers of the property in 1956. Contrary to defendants' contention, plaintiff in the instant case succeeded to its predecessor's status, irrespective of actual or constructive knowledge of the subsequently recorded judgment. *Schulte v Detroit*, 242 Mich 152, 153-155; 218 NW 690 (1928); *Shotwell v Harrison*, 22 Mich 410, 420-421 (1871). Essentially, MCL 565.29 cuts off the subsequent recorded instrument and renders it without further effect. Therefore, we affirm the trial court's decision.¹

¹ Defendants also argue that, even if this Court affirms the trial court's decision as to who holds title to the disputed parcel, plaintiff's claim is defeated by the doctrine of adverse possession.
(continued...)

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Joel P. Hoekstra

(...continued)

However, the trial court did not reach this issue, nor did defendants raise this issue at trial. Defendants have thus failed to preserve this issue for appeal. Appellate review is generally limited to issues decided by the trial court. *Bowers v Bowers*, 216 Mich App 491, 495; 549 NW2d 592 (1996). Because plaintiff's initial trespassing claim appears to remain unresolved and because any adverse possession claim would need further factual development, we decline to review this issue.